

TITLE XVII

CORPORATION LAW

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CHAPTER 1. LIMITED LIABILITY ORDINANCE**Section 17-1-1. Definitions.**

In this chapter, unless the context otherwise requires:

Articles of organization means the initial articles of organization as amended or restated from time to time.

Assignee means any person who acquires in any manner the ownership of an interest in a limited liability company and who has not been admitted as a member.

Capital contribution means cash, other property, the use of property, services rendered or any other valuable consideration transferred to a limited liability company as consideration for issuing an interest in a limited liability company.

Court includes any court and judge with jurisdiction in the case.

Domestic limited liability company or *limited liability company* means a limited liability company organized and existing under this chapter.

Event of withdrawal means an event that causes a person to cease to be a member as provided in section 17-1-37.

Foreign limited liability company means either:

- (1) An unincorporated entity or association that is owned by one (1) or more persons that have limited liability for the debts of the business, other than a partnership or trust, and that is formed under the laws of a jurisdiction other than the Pueblo for any lawful purpose.
- (2) An unincorporated entity or association that is formed under the laws of a jurisdiction other than the Pueblo for any lawful purpose, as defined in that jurisdiction, and that is characterized as a limited liability company by those laws.

Initial articles of organization means the articles of organization filed with the Secretary at the time a limited liability company is formed, including articles of organization that are corrected to conform to the requirements of section 17-1-10.

Member means a person who is admitted as a member in a limited liability company pursuant to this chapter until an event of withdrawal occurs with respect to the person and, if reference is made to members, that reference means a member in the case of a limited liability company that has a single member.

Member's interest, interest in a limited liability company, or interest in the limited liability company means a member's share of the profits and losses of a limited liability company and the right to receive distributions of limited liability company assets or participate in management and control of the company.

Operating agreement means either:

- (1) Any written agreements among all members concerning the affairs of a limited liability company or the conduct of its business.
- (2) In the case of a limited liability company that has a single member, any written statement of the member in good faith purporting to govern the affairs of a limited liability company or the conduct of its business as of the effective time of the statement.

Person includes any individual, general partnership, limited partnership, domestic or foreign limited liability company, corporation, trust, business trust, real estate investment trust, estate and other association.

Pueblo shall mean the Pueblo of Laguna.

Real property includes land, any interest, leasehold or estate in land and any improvements on it.

Secretary means the Secretary of the Pueblo of Laguna.

Section 17-1-2. Limited liability company name.

A. The name of a limited liability company as set forth in its articles of organization shall:

- (1) Contain the words "limited liability company" or the abbreviation "L.L.C." or "LLC" in uppercase or lowercase letters.
- (2) Not contain the words "association", "corporation" or "incorporated" or an abbreviation of these words.

B. The name of the limited liability company as set forth in its articles of organization shall be distinguishable from the name of any corporation, partnership, limited partnership, limited liability partnership, limited liability company or other business entity authorized to transact business in the Pueblo or the State of New Mexico, or any fictitious name adopted by such business entity.

C. A limited liability company name is deemed distinguishable from a name described in subsection B. of this section if it is not so similar to the name that in the judgment of the Secretary the limited liability company name is likely to mislead the public.

Section 17-1-3. Registered office and statutory agent.

A. A limited liability company shall appoint and continuously maintain:

- (1) A registered office that may, but need not be the same as its place of business.
- (2) A statutory agent for service of process on the limited liability company.
- (3) Appointment of an agent for service of process does not constitute a waiver of any immunity from suit possessed by the limited liability company or its members.

B. Unless the statutory agent signed the document making the appointment, the appointment of a statutory agent or a successor statutory agent on whom process may be served is not effective until the agent delivers a statement in writing to the Secretary accepting the appointment.

Section 17-1-4. Change of registered office, statutory agent or statutory agent's address.

A. A limited liability company may change its registered office or statutory agent, or both, by delivering to the Secretary a statement setting forth:

- (1) The name of the limited liability company.
- (2) The address of its current registered office.
- (3) If the address of its registered office is to be changed, the address to which the registered office is to be changed.
- (4) The name and address of its current statutory agent.
- (5) If its statutory agent or the statutory agent's address is to be changed, the name and address of its successor statutory agent or the statutory agent's new address.

B. The statement required by subsection A. of this section shall be executed by either a manager of the limited liability company if management of the limited liability company is vested in one (1) or more managers or a member of the limited liability company if management of the limited liability company is reserved to the members. The change of address of the registered office or statutory agent is effective on delivery of the statement to the Secretary. The appointment of a new statutory agent is effective on delivery of the statement to the Secretary and on receipt by the Secretary of evidence that the new statutory agent accepted his appointment pursuant to subsection 17-1-3B.

C. A statutory agent of a limited liability company may resign as agent by delivering a written executed notice to the Secretary. The Secretary shall mail a copy of the notice to the limited liability company at its registered office. The appointment of the agent terminates thirty (30) days after receipt of the notice by the Secretary or on the appointment of a new statutory agent, whichever occurs first.

D. If a statutory agent changes its address to another place, it may change the address by delivering a statement to the Secretary as required by subsection A. of this section, except that it need be signed only by the statutory agent. The statement shall recite that a copy of it has been mailed to the limited liability company.

Section 17-1-5. Records to be kept; inspection rights of members.

A. A limited liability company shall keep at its registered office the following:

- (1) A current list of the full name and last known business, residence or mailing address of each member.
- (2) A copy of the initial articles of organization and all amendments.

- (3) Copies of all written operating agreements and all amendments to the agreements, including any prior written operating agreements no longer in effect.
- (4) Copies of any writing described in this section.
- (5) Copies of the limited liability company's federal, state and local income tax returns and reports, if any, for the three (3) most recent years.
- (6) Copies of any financial statements of the limited liability company for the three (3) most recent years.

B. Each member may:

- (1) Inspect and copy the limited liability company records required to be maintained by this section.
- (2) Inspect and copy other information regarding the affairs of the limited liability company as is just and reasonable for any purpose reasonably related to the member's interest.

Section 17-1-6. Business transactions of member or manager with limited liability company.

Except as provided in an operating agreement, a member or manager may lend money to and transact other business with the limited liability company and, subject to other applicable law, has the same rights and obligations with respect to those transactions as a person who is not a member or manager.

Section 17-1-7. Purpose.

A limited liability company may be organized under this chapter and may conduct or promote business and other activities for any lawful purpose, whether for profit or not for profit, except banking, insurance and professional services.

Section 17-1-8. General powers of a domestic limited liability company.

A domestic limited liability company may:

- A. Sue and be sued, complain and defend in its name and in all courts; provided that a limited liability company that enjoys sovereign immunity shall not be deemed to have waived such immunity by application of this subsection. Any waiver or abrogation of immunity shall be established only as otherwise provided by law.
- B. Purchase, take, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal in and with real property or personal property, or any interest in real or personal property, wherever located.
- C. Sell, convey, mortgage, pledge, create a security interest in, lease, exchange, transfer, option and otherwise dispose of any of its assets.

- D. Lend money to and otherwise assist its members, managers, employees, officers and agents.
- E. Purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in or obligations of other domestic or foreign limited liability companies, corporations, nonprofit corporations, associations, general or limited partnerships, trusts, business trusts or individuals or direct or indirect obligations of the United States or of any government, Tribe, state, territory, governmental district or municipality or of any instrumentality of any of the foregoing.
- F. Make contracts, including contracts of guaranty, suretyship and indemnification, incur liabilities, borrow money at such rates of interest as the limited liability company may determine, issue its notes, bonds and other obligations and secure any of its obligations by mortgage, deed of trust, security agreement, pledge or other encumbrance of any of its assets.
- G. Lend money for any lawful purpose, invest and reinvest its monies and take and hold real property and personal property as security for payment of monies so loaned or invested.
- H. Conduct its business, carry on its operations, have offices and exercise the powers granted by this chapter within or without the Pueblo, provided that, the limited liability company has complied with applicable laws governing the location and operation of businesses on Pueblo Lands.
- I. Elect or appoint officers, assistant officers, representatives and agents of the limited liability company, define their duties and fix their compensation.

Section 17-1-9. Formation.

One (1) or more persons may form a limited liability company by signing and filing with the Secretary an original copy of the articles of organization for the limited liability company. The person or persons need not be members of the limited liability company at the time of formation or after formation has occurred. At least one (1) person forming and one (1) member of the limited liability company shall be a Pueblo member, or an entity owned by the Pueblo or a Pueblo member.

Section 17-1-10. Articles of organization.

- A. The articles of organization shall set forth:
 - (1) The name of the limited liability company.
 - (2) The address of the registered office and the name and business, residence or mailing address of the agent for service of process required to be maintained by section 17-1-3.
 - (3) If the limited liability company will not continue perpetually, the latest date on which the limited liability company must dissolve.

- (4) Either of the following statements:
 - (a) Management of the limited liability company is vested in a manager or managers.
 - (b) Management of the limited liability company is reserved to the members.
- (5) The name and business, residence or mailing address of either of the following:
 - (a) If management of the limited liability company is vested in a manager or managers, each person who is a manager of the limited liability company and each member who owns a twenty (20) percent or greater interest in the capital or profits of the limited liability company.
 - (b) If management of the limited liability company is reserved to the members, each person who is a member of the limited liability company.

B. The articles of organization may include any other provision that is consistent with law, including any provisions under this chapter that are required or permitted to be set out in an operating agreement of the limited liability company.

C. It is not necessary to set out in the articles of organization any of the powers enumerated in this chapter.

Section 17-1-11. Amendment of articles of organization; restatement.

A. The articles of organization of a limited liability company are amended by filing with the Secretary an original and one (1) copy of the articles of amendment, signed on behalf of the limited liability company by a manager if management of the limited liability company is vested in one (1) or more managers or by a member if management of the limited liability company is reserved to the members. The articles of amendment shall set forth:

- (1) The name of the limited liability company.
- (2) The date the initial articles of organization were filed.
- (3) The amendment to the articles of organization.

B. A limited liability company shall amend its articles of organization within thirty (30) days after the happening of any of the following events:

- (1) Any arrangements or facts have changed making the articles of organization inaccurate in any respect other than those changes required to be set forth in a statement delivered to the Secretary pursuant to this section.
- (2) Management of the limited liability company is reserved to the members and there is a change in the persons who are members.
- (3) Management of the limited liability company is vested in a manager or managers and there is a change in the persons who are managers or in the members who own twenty (20) percent or greater interest in the capital or profits interest of the limited liability company.

C. A limited liability company may amend its articles of organization if its articles of organization as amended contain only provisions that may be lawfully contained in the articles of organization at the time of making the amendment. In particular and without limitation on the general power of amendment, a limited liability company may amend its articles of organization to:

- (1) Change the name of the limited liability company.
- (2) Change, enlarge or diminish the purposes of the limited liability company.
- (3) If management is reserved to the members of a limited liability company, vest management of the limited liability company in one (1) or more managers.
- (4) If management is vested in one (1) or more managers, vest management of the limited liability company in the members.

D. A limited liability company may restate its articles of organization. Restated articles of organization shall be executed and filed in the same manner as articles of amendment. Restated articles of organization shall be specifically designated as such in the heading and shall state either in the heading or in an introductory paragraph the limited liability company's present name and, if it has been changed, all of its former names and the date of the filing of its initial articles of organization.

E. A limited liability company that has not amended its articles of organization as required by this section may not maintain an action upon or on account of a contract or transaction made in the name of the limited liability company in the courts of the Pueblo until it has first amended its articles of organization as required by this section. No person has any liability because an amendment to articles of organization has not been filed to reflect the occurrence of any event prescribed by subsection B. of this section if the amendment is filed within the thirty-day period specified in subsection B. of this section.

Section 17-1-12. Filing with the Secretary.

A. The original signed copy of the articles of organization or any other document required to be filed pursuant to this chapter shall be delivered to the Secretary. If the Secretary determines that the documents conform to the filing provisions of this chapter, it shall, when all required filing fees have been paid:

- (1) Endorse, stamp or attach on the signed original and duplicate copy the word "filed" and the date and time of its acceptance for filing.
- (2) Retain the signed original in the Secretary's files.
- (3) Return a duplicate copy to the person who filed it or the person's representative.

B. If the Secretary is unable to make the determination required for filing by subsection A. of this section at the time any documents are delivered for filing, the documents are deemed to have been filed at the time of delivery if the Secretary subsequently determines either of the following:

- (1) The documents as delivered conform to the filing provisions of this chapter.

- (2) Within twenty (20) days after notification of nonconformance is given by the Secretary to the person who delivered the documents for filing or the person's representative, the documents are brought into conformance.

C. A document may specify a delayed effective time or date, or both, and is effective at that specified time and date. If the document specifies a delayed effective date but does not specify the time, the document is effective on the specified date at 12:01 a.m. Mountain Standard Time. A delayed effective date for a document may not be later than the ninetieth (90th) day after the date the document is delivered to the Secretary for filing.

D. If the filing and determination requirements of this chapter are not satisfied completely within the time prescribed in subsection B.(2) of this section, the documents shall not be filed.

Section 17-1-13. Formation of limited liability company.

A. Except as provided in subsection 17-1-12C., a limited liability company is formed when the articles of organization are delivered to the Secretary for filing, even if the Secretary is unable to make the determination required for filing by subsection 17-1-12A. at the time of delivery. If the articles of organization, as delivered to the Secretary, do not conform to the filing provisions of this chapter and are not brought into conformance within the time period prescribed by subsection 17-1-12B.(2), the existence of the limited liability company terminates at the end of the time period.

B. A copy of the articles of organization that is filed with the Secretary and that is stamped "filed" and marked with the filing date is conclusive evidence that all conditions precedent required to be performed by the organizers have been complied with and that the limited liability company has been legally organized and formed under this chapter. A limited liability company continues perpetually unless otherwise provided in its articles of organization or operating agreement or until the limited liability company is dissolved and terminated in accordance with this chapter.

Section 17-1-14. Notice of existence of limited liability company.

Articles of organization that are on file with the Secretary constitute notice that the limited liability company is a limited liability company and are notice of all other facts set forth that are required by this chapter to be set forth in the articles of organization.

Section 17-1-15. Document corrections.

A. A domestic or foreign limited liability company may correct a document that has been delivered to the Secretary for filing or a document that has been filed by the Secretary if the document either:

- (1) Contains an incorrect statement and the correction does not materially alter a substantive provision in the document.
- (2) Was defectively executed, attested, verified or acknowledged.

B. A document is corrected if the domestic or foreign limited liability company does both of the following:

- (1) Prepares articles of correction that:
 - (a) Describe the document or that have attached a copy of the document.
 - (b) Specify the date the document was delivered to the Secretary.
 - (c) Specify the incorrect statement and the reason the statement is incorrect or specify the manner in which the execution, attestation, verification or acknowledgment was defective.
 - (d) Correct the incorrect statement or defective execution, attestation, verification or acknowledgment.
- (2) Delivers the article of correction to the Secretary for filing.

C. Articles of correction are effective on the effective date of the document they correct except as to persons who rely on the incorrect statement or other defect and who are adversely affected by the correction. As to those persons, articles of correction are effective as provided in section 17-1-12.

D. If a domestic or foreign limited liability company corrects a document after the limited liability company delivers the document to the Secretary but before the Secretary reviews the document for filing, the Secretary shall file the document and the articles of correction simultaneously and both are effective on the effective date of the corrected document.

Section 17-1-16. Liability to third parties.

Except as provided in this chapter, a member, manager, employee, officer or agent of a limited liability company is not liable, solely by reason of being a member, manager, employee, officer or agent, for the debts, obligations and liabilities of the limited liability company whether arising in contract or tort, under a judgment, decree or order of a court or otherwise.

Section 17-1-17. Unauthorized assumption of power.

All persons who assume to act as a limited liability company without authority to do so are jointly and severally liable for all debts and liabilities incurred by the persons so acting.

Section 17-1-18. Limited liability company property.

A. Real property and personal property owned or purchased by a limited liability company may be held, owned and conveyed in the name of the limited liability company.

B. Instruments and documents to mortgage or dispose of real property held in the name of the limited liability company are valid and binding on the limited liability company if executed by one (1) or more managers of a limited liability company if management is vested in one (1)

or more managers or by one (1) or more members of a limited liability company if management has been reserved to the members, but the limited liability company may recover the property unless any of the following conditions exist:

- (1) The member's or manager's act binds the limited liability company under the provisions of section 17-1-19.
- (2) All of the members executed the instrument or document.
- (3) The property was conveyed by the grantee or a person claiming through the grantee to a holder for value without knowledge that the member or manager exceeded his authority in making the conveyance.

Section 17-1-19. Member or manager as agent.

A. Unless the articles of organization of a limited liability company provide that management is vested in one (1) or more managers:

- (1) Each member is an agent of the limited liability company for the purpose of carrying on its business in the usual way.
- (2) The act of each member, including the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business of the limited liability company of which he is a member binds the limited liability company unless the acting member has in fact no authority to act for the limited liability company in the particular matter and the person with whom he is dealing has knowledge of the fact that the member has no such authority.

B. If the articles of organization of a limited liability company provide that management is vested in one (1) or more managers:

- (1) A member is not an agent of the limited liability company for the purpose of its business solely by reason of being a member except to the extent that authority has been delegated to the member by the sole manager or managers or by the provisions of an operating agreement.
- (2) Each manager is an agent of the limited liability company for the purpose of carrying on its business in the usual way.
- (3) The act of each manager, including the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business of the limited liability company of which he is a manager binds the limited liability company unless the acting manager has in fact no authority to act for the limited liability company in the particular matter and the person with whom he is dealing has knowledge of the fact that the manager has no such authority.

C. An act of a member or manager that is not apparently for carrying on the business of the limited liability company in the usual way does not bind the limited liability company unless authorized in fact by the limited liability company in the particular matter.

D. An act of any member, manager, employee, officer or other agent of a limited liability company in violation of a restriction on authority does not bind the limited liability company to persons with knowledge of the restriction.

Section 17-1-20. Rights of judgment creditors of a member.

A. On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the member's interest in the limited liability company with payment of the unsatisfied amount of the judgment plus interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the member's interest.

B. This chapter does not deprive any member of the benefit of any exemption under laws applicable to his interest in the limited liability company.

C. This section provides the exclusive remedy by which a judgment creditor of a member may satisfy a judgment out of the judgment debtor's interest in the limited liability company.

Section 17-1-21. Parties to actions.

A member, manager, employee, officer or agent of a limited liability company, solely by reason of being a member, manager, employee, officer or agent of the limited liability company, is not a proper party to proceedings by or against a limited liability company unless the object is to enforce a member's right against such member, manager, employee, officer or agent or the liability of such member, manager, employee, officer or agent to the limited liability company or except as provided in this chapter.

Section 17-1-22. Liability for false statement in articles; definition.

A. If any articles of organization, articles of merger or articles of termination contain any false statement, a person, including a member of a limited liability company, who suffers loss by relying on the false statement may recover damages for the loss from the limited liability company and from:

- (1) Any person who executes the articles, or causes another to execute the articles on his behalf, and knew or reasonably should have known, and any responsible person who knew or reasonably should have known, the statement to be false at the time the articles were executed.
- (2) Any responsible person who knows or reasonably should have known that any arrangement or other fact described in the articles has changed, making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that responsible person to amend the articles.

B. For purposes of this section, "responsible person" means a manager of a limited liability company in which management is vested in a manager or managers and a member of a limited liability company in which management is reserved to the members.

Section 17-1-23. Management of limited liability company; definition.

A. Unless the articles of organization provide that management of the limited liability company is vested in one (1) or more managers, management of the limited liability company is vested in the members, subject to any provision in an operating agreement restricting or enlarging the management rights or responsibilities of one (1) or more members or classes of members.

B. If the articles of organization provide that management of the limited liability company is vested in one (1) or more managers, management of the limited liability company is vested in a manager or managers, subject to any provisions in an operating agreement restricting or enlarging the management rights or responsibilities of one (1) or more managers or classes of managers or reserving specified management rights to the members or classes of members. A manager need not be a member of the limited liability company unless otherwise required by an operating agreement. A manager shall be designated or elected and may be removed or replaced in the manner provided in an operating agreement. A manager also holds the office and has the responsibilities that are accorded to him by the members and that are provided in an operating agreement. If an operating agreement does not provide a manner for designating or electing additional or replacement managers, on the withdrawal or resignation of a manager, management of the limited liability company continues to be vested in the remaining managers, or if there are no remaining managers, management is vested in one (1) or more new managers to be designated or elected by a majority of the members.

C. Except as provided in an operating agreement, the affirmative vote, approval or consent of all members is required to:

- (1) Adopt, amend, amend and restate, or revoke an operating agreement or authorize a transaction, agreement or action on behalf of the limited liability company that is unrelated to its purpose or business as stated in an operating agreement or that otherwise violates an operating agreement.
- (2) Issue an interest in the limited liability company to any person.
- (3) Approve a plan of merger or consolidation of the limited liability company with or into one (1) or more business entities as defined in section 17-1-40.
- (4) Authorize an amendment to the articles of organization that changes the status of the limited liability company from or to one in which management is vested in a manager or managers to or from one in which management is reserved to the members.

D. Except as provided in an operating agreement, the affirmative vote, approval or consent of a majority of the members, or if management of the limited liability company is vested in one (1) or more managers, the affirmative vote, approval or consent of the sole manager or a majority of the managers, is required to:

- (1) Resolve any difference concerning matters connected with the business of the limited liability company.

- (2) Authorize the distribution of limited liability company cash or property to the members.
- (3) Authorize the limited liability company to repurchase all or part of any member's interest in the limited liability company from that member.
- (4) Authorize the filing of a notice of winding up or articles of termination concerning the limited liability company.
- (5) Subject to subsection C.(4) of this section, authorize an amendment to the articles of organization, except that an amendment that merely corrects a false or inaccurate statement in the articles of organization may be filed at any time by a manager if management of the limited liability company is vested in one (1) or more managers or by a member if management of the limited liability company is reserved to the members.

E. For purposes of subsections B. and D. of this section, a majority consists of more than one-half ($\frac{1}{2}$) of the members or managers, as the case may be, except that if an operating agreement provides for allocation of voting rights among different members or managers or classes of members or managers on any basis other than a per capita basis, a majority consists of one (1) or more members or managers, as the case may be, who control more than one-half ($\frac{1}{2}$) of the votes entitled to be cast with respect to general business decisions as provided in an operating agreement.

Section 17-1-24. Operating agreement.

A. The members of a limited liability company may adopt an operating agreement containing provisions they deem appropriate. All or part of an operating agreement may be subsequently repealed or amended by agreement or consent of all of the members or, to the extent an operating agreement so provides, by all of the managers or a specified portion of the members or managers.

B. An operating agreement governs relations among the members and the managers and between the members and managers and the limited liability company and may contain any provision that is not contrary to law and that relates to the business of the limited liability company, the conduct of its affairs, its rights, duties or powers and the rights, duties or powers of its members, managers, officers, employees or agents including:

- (1) Whether the management of the limited liability company is vested in one (1) or more managers and, if so, the powers to be exercised by managers.
- (2) Providing for classes or groups of members with various rights, powers and duties and providing for the future creation of additional classes or groups of members with relative rights, powers and duties superior, equal or inferior to existing classes and groups of members.
- (3) The exercise or division of management or voting rights among different classes or groups of members or managers on a per capita or other basis.

- (4) With respect to any matter requiring a vote, approval or consent of members or managers, provisions relating to notice of the time, place and purpose of any meeting at which the matter is to be voted on, waiver of notice, action by consent without a meeting, the establishment of a record date, quorum requirements, authorizations by proxy or any other matter concerning the exercise of any voting or approval rights.
- (5) Restrictions on the transfer of and option rights to acquire or sell any member's interest in the limited liability company.

C. A court may enforce an operating agreement by injunction or by any other relief that the court in its discretion determines to be fair and appropriate in the circumstances.

Section 17-1-25. Action by written consent.

Unless otherwise provided in an operating agreement, any action may be taken by the members or managers, as the case may be, by a consent in writing, stating the action so taken and signed by that percentage or number of the members or managers, as the case may be, required by an operating agreement or this chapter to take or approve the action.

Section 17-1-26. Capital contributions.

A. An interest in a limited liability company may be issued in exchange for a capital contribution or an enforceable promise to make a capital contribution in the future, or both.

B. Except as otherwise provided in an operating agreement, the agreement or consent of all of the members is necessary to fix or modify the amount and character of the capital contributions that a member shall make or shall promise to make in exchange for an interest in the limited liability company.

Section 17-1-27. Liability for contributions.

A. A promise by a member to make a capital contribution to the limited liability company is not enforceable unless set out in writing and signed by the member.

B. Except as provided in an operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to make a capital contribution, including a promise to perform services, even if he is unable to perform because of death, disability or any other reason. If a member does not make a required capital contribution when due, he is obligated at the option of the limited liability company to contribute cash equal to the value of that portion of the promised capital contribution that has not been made. This option is in addition to and not in lieu of any other rights, including the right to specific performance that the limited liability company may have against the member under the articles of organization, an operating agreement or applicable law.

C. Except as provided in an operating agreement, a member's obligation to make a required capital contribution may be compromised or released only with the written consent of all members. The obligation is not enforceable by a third party creditor of the limited liability

company unless the member has specifically agreed or consented to the enforcement or the limited liability company has assigned the member's obligation to the creditor or creditors seeking to enforce the obligation.

D. On the failure of a member to make a promised capital contribution when due, the limited liability company may enforce the member's obligation by appropriate legal action for damages for breach of contract or for specific performance, and the limited liability company may exercise and enforce additional rights and remedies as may be provided under an operating agreement in the event of any such failure, subject to the applicable law regarding the enforcement of contracts. Except as provided in an operating agreement, a member may enforce another member's promise to make a capital contribution.

Section 17-1-28. Interim distributions.

A. Except as provided in this chapter, a limited liability company shall make distributions of cash or other property to its members before the dissolution and winding up of the limited liability company to the extent and at the times or on the occurrence of the events specified in an operating agreement, or if an operating agreement does not so specify, pursuant to subsection 17-1-23D.(2).

B. Distributions of cash or other property to members by a limited liability company before the dissolution and winding up of a limited liability company shall be shared among the members and among classes of members in the manner provided in an operating agreement. If an operating agreement does not so provide, distributions shall be shared among the members in the following order:

- (1) Distributions shall be shared among the members in proportion to the amount of cash capital contributions and the value of other capital contributions, as determined under subsection C. of this section, made by them and not returned until each member has been repaid his capital contributions.
- (2) Other distributions shall be shared by the members equally.

C. For purposes of subsection B. of this section, a capital contribution other than a cash contribution has the value determined in the manner prescribed in an operating agreement. If an operating agreement does not specify the value of any such capital contribution and does not prescribe a manner for determining its value:

- (1) The value of a capital contribution of services is the fair market value of the services at the time they are rendered.
- (2) The value of a capital contribution of property other than cash is the fair market value of the property at the time of its transfer to the limited liability company.
- (3) The value of a capital contribution of the use of property is the fair market value of the use of the property during the period that the limited liability company enjoyed possession or use of the property.
- (4) The value of any other capital contribution other than cash is deemed to be zero.

Section 17-1-29. Distribution in kind.

Except as otherwise provided in an operating agreement:

- A. A member, regardless of the nature of his or her contribution, has no right to demand and receive a distribution from a limited liability company in a form other than cash.
- B. A member may not be compelled to accept a distribution of any property other than cash from the limited liability company unless the member receives an undivided ownership interest in the property that is in the same percentage as he would have shared in a cash distribution equal to the value of the property at the time of distribution.

Section 17-1-30. Status as a creditor.

At the time a member becomes entitled to receive a distribution, that member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution.

Section 17-1-31. Limitation on distributions; wrongful distribution; treatment as income.

A. A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company would exceed the fair value of the assets of the limited liability company, except that:

- (1) Liabilities to members and former members under sections 17-1-28 and 17-1-32 and liabilities for which the recourse of creditors is limited to specified property shall be excluded.
- (2) The fair value of property subject to a liability for which the recourse of creditors is limited to specified property shall be included in the assets of the limited liability company only to the extent that the fair value of the property exceeds that liability.

B. The limited liability company may base a determination that a distribution is not prohibited under subsection A. of this section on either of the following:

- (1) Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances.
- (2) A fair valuation or other method that is reasonable in the circumstances.

C. The effect of a distribution under subsection A. of this section is measured either as of the date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization or as of the date the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

D. If a member receives a distribution with respect to his interest in a limited liability company in violation of this chapter or an operating agreement, he is liable to the limited liability company for a period of six (6) years thereafter for the amount of the wrongful distribution.

Section 17-1-32. Distributions on withdrawal.

On any event of withdrawal of a member, except as otherwise provided in an operating agreement, the withdrawn member and the withdrawn member's personal representatives, successors and assigns do not have the right to receive any distribution by reason of the withdrawal but do have the rights of an assignee of the withdrawn member's interest in the limited liability company to receive distributions with respect to the member's interest during any continuation of the business of the limited liability company and during and on completion of winding up less any damages recoverable against the withdrawn member if the event of withdrawal violated an operating agreement.

Section 17-1-33. Distribution on winding up.

On the winding up of a limited liability company, its assets shall be applied and distributed in the following order:

A. To creditors, including members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited liability company other than liabilities for distributions to members and former members under section 17-1-28 or section 17-1-32.

B. Except as provided in an operating agreement, to members and former members in satisfaction of liabilities for distributions under section 17-1-28 or section 17-1-32.

C. To the members in the manner provided in subsection 17-1-28B.

Section 17-1-34. Sharing of profits.

The profits of a limited liability company shall be allocated among the members and among classes of members in the manner provided in an operating agreement. If an operating agreement does not so provide, profits shall be allocated among the members according to the manner in which they share in distributions that exceed the repayment of their capital contributions.

Section 17-1-35. Admission of members.

A. At the time the limited liability company is formed, a person becomes a member by either of the following:

- (1) Being identified as a member in the initial articles of organization.
- (2) If the members are not identified in the initial articles of organization, being identified as a member in and signing in person or by an attorney-in-fact an operating agreement that exists at the time the initial articles of organization are filed or being identified

as a member in a written statement certified, before or after the filing of the initial articles of organization, by each of the managers identified in the initial articles of organization.

B. After a limited liability company's initial articles of organization are filed, a person may be admitted as an additional member as follows:

- (1) If a person is acquiring an interest in the limited liability company directly from the limited liability company, on the limited liability company's written acknowledgment of the acceptance of the person's admission under the applicable provisions of an operating agreement, or if an operating agreement does not so provide, on the consent of all members.
- (2) If the person is an assignee of all or part of a member's interest in a limited liability company, on the terms provided in an operating agreement or, if an operating agreement does not so provide, on the approval or consent of all members.
- (3) If the person is an assignee of an interest in the limited liability company of a member who has the power under an operating agreement to grant the assignee the right to become a member, on the exercise of the power in compliance with all conditions limiting the member's exercise of the power.
- (4) If there are no members and all of the assignees consent in writing to the admission of one (1) or more persons as a member or members, unless otherwise provided in the operating agreement.

Section 17-1-36. Interest in limited liability company; transferability of interest; rights of assignees.

A. An interest in a limited liability company is personal property and, except as provided in an operating agreement, may be assigned in whole or in part. The assignment of an interest in a limited liability company does not dissolve the limited liability company or entitle the assignee to participate in the management of the business and affairs of the limited liability company or to become or to exercise the rights of a member, unless the assignee is admitted as a member as provided in section 17-1-35. An assignee that has not become a member is only entitled to receive, to the extent assigned, the share of distributions, including distributions representing the return of contributions, and the allocation of profits and losses, to which the assignor would otherwise be entitled with respect to the assigned interest.

B. An assignee who has become a member has the rights and powers to the extent assigned and is subject to the restrictions and liabilities of a member under the articles of organization, an operating agreement and this chapter. An assignee who becomes a member is also liable for any obligations of his or her assignor to make capital contributions.

C. Unless otherwise provided in an operating agreement, a member who has assigned all or part of his or her interest in a limited liability company is not released from his liability to the limited liability company under this chapter without the written consent of all members

whether or not the assignee becomes a member. A member who has assigned all of his or her interest in a limited liability company remains a member until the admission of the assignee as a member unless otherwise provided in an operating agreement.

Section 17-1-37. Events of withdrawal.

Except as approved by the written consent of all members at the time, a person ceases to be a member of a limited liability company on the occurrence of any of the following events of withdrawal:

- A. The member withdraws from the limited liability company as provided in section 17-1-38.
- B. On assignment of all of the member's interest and admission of one (1) or more of the assignees as a member, but an operating agreement may permit the assigning member to remain a member until all assignees of the member's interest have been admitted as members.
- C. The member is expelled as a member pursuant to the articles of organization or an operating agreement.
- D. Unless otherwise provided in an operating agreement, the member does any of the following:
 - (1) Makes an assignment for the benefit of creditors.
 - (2) Files a voluntary petition in bankruptcy.
 - (3) Is adjudicated as bankrupt or insolvent.
 - (4) Files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or rule.
 - (5) Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in a bankruptcy, insolvency, reorganization or similar proceeding.
 - (6) Seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of his or her property.
- E. Unless otherwise provided in an operating agreement, if one hundred twenty (120) days after the beginning of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or rule the proceeding has not been dismissed, or if within ninety (90) days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of his or her property the appointment is not vacated or stayed or within ninety (90) days after the expiration of any such stay, the appointment is not vacated.

Section 17-1-38. Withdrawal of member.

Except as provided in an operating agreement, a member may withdraw from a limited liability company at any time on mailing or delivering written notice of withdrawal to the other members at their last known addresses set forth in the list maintained by the limited liability company pursuant to subsection 17-1-5A.(1). If the withdrawal violates an operating agreement, the limited liability company may recover from the withdrawing member damages for breach of the operating agreement and offset the damages against any amount otherwise distributable to him.

Section 17-1-39. Definition of business entity.

As used in sections 17-1-40 through 17-1-45, "business entity" or "entity" means a corporation, a business trust, a real estate investment trust, an unincorporated business association, a general partnership, a limited partnership or a domestic or foreign limited liability company formed or organized under the laws of the Pueblo, any other Tribe, any state, the United States, any foreign country or any other foreign jurisdiction.

Section 17-1-40. Procedure for merger or consolidation; exchange.

A. Pursuant to a plan of merger or consolidation that meets the conditions provided by section 17-1-41, a limited liability company may merge or consolidate with or into one (1) or more business entities. The surviving or resulting business entity shall be designated in the plan of merger or consolidation.

B. The plan of merger or consolidation shall be approved by all members of a domestic limited liability company that is to merge or consolidate, unless an operating agreement provides otherwise.

C. The plan of merger or consolidation shall be approved by each business entity other than a domestic limited liability company in the manner required by the laws of the jurisdiction in which it is organized.

D. Rights or securities of or interests in a business entity that is a party to the merger or consolidation may be exchanged for or converted into cash, property, obligations, rights or securities of or interests in the surviving or resulting business entity.

Section 17-1-41. Plan of merger or consolidation.

The plan of merger or consolidation shall be in writing and shall set forth:

- A. The name and jurisdiction of formation or organization of each business entity that plans to merge or consolidate.
- B. The name of the surviving or resulting business entity.
- C. The terms and conditions of the proposed merger or consolidation.

- D. The manner and basis of converting the rights or securities of or interests in each business entity that is a party to the merger or consolidation into obligations, rights or securities of or interests in the surviving or resulting business entity or into cash or other property, in whole or in part.
- E. In the case of a merger, the amendments to the following documents of the surviving or resulting business entity that are desired to be effected by the merger or a statement that no such amendments are desired:
 - (1) If a domestic or foreign limited liability company, the articles of organization.
 - (2) If a corporation, the articles or certificate of incorporation.
 - (3) If a limited partnership, the certificate of limited partnership.
 - (4) If any type of business entity other than the type described in subsections E.(1), (2) or (3) of this section, an organizational document that is similar to the documents provided in subsections E.(1), (2) or (3) of this section.
- F. In the case of a consolidation, all statements required to be set forth in the following documents of the resulting business entity:
 - (1) If a domestic or foreign limited liability company, the articles of organization.
 - (2) If a corporation, the articles or certificate of incorporation.
 - (3) If a limited partnership, the certificate of limited partnership.
 - (4) If any type of business entity other than the type described in subsections F.(1), (2) or (3) of this section, an organizational document that is similar to the documents provided in subsections F.(1), (2) or (3) of this section.
- G. Other provisions concerning the proposed merger or consolidation that are deemed necessary or desirable.

Section 17-1-42. Articles of merger or consolidation.

A. A business entity that survives or results from a merger or consolidation pursuant to this article shall file articles of merger or consolidation with the Secretary. The articles of merger or consolidation shall:

- (1) Include the plan of merger or consolidation or state that the plan of merger or consolidation is on file at a place of business of the surviving or resulting business entity, including the address of the place of business, and that the surviving or resulting business entity will provide a copy of the plan of merger or consolidation on request and without cost to any person who holds an interest in a business entity that is a party to the merger or consolidation.
- (2) State that each business entity that is a party to the merger or consolidation approved a plan of merger or consolidation in the manner provided by law.
- (3) State the future effective date of the merger or consolidation if it is not effective on the filing of the articles of merger or consolidation.

(4) If the surviving or resulting business entity is not a business entity organized under the laws of the Pueblo, state both of the following:

(a) The surviving or resulting business entity agrees that it may be served with process in the Pueblo in an action, suit or proceeding for the enforcement of any obligation of any business entity that was organized under the laws of the Pueblo and that is a party to the merger or consolidation and for the enforcement of any obligation of the surviving or resulting business entity arising from the merger or consolidation.

B. The articles of merger or consolidation shall be duly executed as follows:

(1) In the case of a domestic limited liability company, by the member or manager designated in the plan of merger or consolidation.

(2) In the case of a business entity other than a domestic limited liability company, in the manner provided by law.

C. Articles of merger or consolidation shall serve as articles of termination for a limited liability company that is not the surviving or resulting business entity in the merger or consolidation.

Section 17-1-43. Abandonment of merger or consolidation.

Unless the plan of merger or consolidation provides otherwise, a proposed merger or consolidation may be abandoned before the effective date of the merger or consolidation by a vote of all of the members of each limited liability company that is a party to the proposed merger or consolidation, unless its operating agreement provides otherwise, and by the vote of each other business entity that is a party to the proposed merger or consolidation in a manner required by the laws of the jurisdiction in which it is organized.

Section 17-1-44. Effective date of merger or consolidation.

A merger or consolidation is effective as of the later of:

A. The time the Secretary files the articles of merger or consolidation for record.

B. The time established in the articles of merger or consolidation.

Section 17-1-45. Effects of merger or consolidation.

A. Consummation of a merger or consolidation has the following effects:

(1) The separate existence of each business entity that merges or consolidates ceases, except the existence of the surviving or resulting business entity.

(2) The interest that is to be converted or exchanged under the terms of the articles of merger or consolidation of each member, shareholder, partner or similar interest holder of a business entity that is a party to the merger or consolidation is so converted and the former holders of the interest are entitled only to the rights provided in the articles of merger or consolidation and the rights otherwise provided by law.

- (3) In addition to any other purposes and powers set forth in the articles of merger or consolidation and if the articles so provide, the surviving or resulting business entity has the purpose and powers of each party to the merger or consolidation.
- (4) The assets of each party to the merger or consolidation, including real, personal, tangible and intangible property and any legacies that it would have been capable of taking, transfer to, vest in and devolve on the surviving or resulting business entity by operation of law without further act or deed. If elected by any party to the merger or consolidation or by the surviving or resulting business entity confirmatory deeds, assignments or similar instruments to evidence the transfer may be executed and delivered at any time in the name of any party to the merger or consolidation by its last acting members or managers or by the appropriate authorities of the surviving or resulting business entity.
- (5) The surviving or resulting business entity is liable for all of the debts and obligations of each nonsurviving party to the merger or consolidation. Any existing claim, action or proceeding pending by or against any nonsurviving party to the merger or consolidation may be prosecuted to judgment as if the merger or consolidation had not taken place or, on motion of the surviving or resulting business entity, the surviving or resulting business entity may be substituted as a party in the action or proceeding.
- (6) A merger or consolidation does not impair the rights of creditors or any liens on the property of any business entity that is a party to the merger or consolidation.

B. Unless otherwise provided in the plan of merger or consolidation a merger or consolidation of a limited liability company, including a limited liability company that is not the surviving or resulting business entity, does not require the limited liability company to wind up its affairs or pay its liabilities and distribute its assets.

Section 17-1-46. Dissolution.

A. A limited liability company organized under this chapter is dissolved on the occurrence of the first of the following:

- (1) At the time or on the happening of the events specified for dissolution in the articles of organization or an operating agreement.
- (2) Except as otherwise provided in an operating agreement, the written consent to dissolve by more than one-half ($\frac{1}{2}$) of the members and by one (1) or more members who on dissolution and liquidation of the assets of the limited liability company would be entitled to receive assets valued at more than one-half ($\frac{1}{2}$) of the value of all assets distributed to all members on liquidation.
- (3) Entry of a judgment of dissolution under section 17-1-51.
- (4) Except as otherwise provided in an operating agreement, an event of withdrawal of the last remaining member unless within ninety (90) days all assignees by written consent admit at least one (1) member pursuant to subsection 17-1-35B.(4) to continue the business of the limited liability company.

B. As soon as possible after any of the events specified in this section effecting the dissolution of the limited liability company occurs, the limited liability company shall file a written notice of winding up with the Secretary signed on behalf of the limited liability company by a manager if management of the limited liability company is vested in one (1) or more managers or by a member if management of the limited liability company is reserved to the members. The notice of winding up shall state all of the following:

- (1) The name of the limited liability company.
- (2) The date of filing of the initial articles of organization.
- (3) Notice of the dissolution of the limited liability company and the commencement of winding up of its business and affairs.

Section 17-1-47. Rights of assignee.

If on dissolution the limited liability company has no manager and no member and none is admitted pursuant to subsection 17-1-35B.(4), the assignees by unanimous written consent may appoint an agent, which may be an assignee or any other person or entity, including a liquidating trustee, to wind up the business and affairs of the limited liability company. Any such agent is authorized to sign and file on behalf of the limited liability company a notice of winding up under subsection 17-1-46B., and articles of termination under section 17-1-49 and to liquidate its business and affairs in accordance with subsection 17-1-48B., and an operating agreement.

Section 17-1-48. Effect of dissolution.

A. After the dissolution of a limited liability company, its separate existence continues until articles of termination have been filed with the Secretary or until a decree terminating the limited liability company has been entered by a court of competent jurisdiction.

B. After its dissolution, the limited liability company shall proceed to collect its assets, convey and dispose of its properties that are not to be distributed in kind to its members, pay, satisfy or discharge, or make adequate provision to pay or discharge, its liabilities and obligations and do all other acts required to liquidate its business and affairs.

Section 17-1-49. Articles of termination.

If all of the known property and assets of a limited liability company have been applied and distributed pursuant to this chapter, written articles of termination shall be signed on behalf of the limited liability company by a manager if management of the limited liability company is vested in one (1) or more managers or by a member if management of the limited liability company is reserved to the members. The articles of termination shall be filed with the Secretary and shall state:

- A. The name of the limited liability company.
- B. That a notice of winding up disclosing the dissolution of the limited liability company has been filed with the Secretary and the date the notice was filed.

- C. That all of the known properties and assets of the limited liability company have been applied and distributed pursuant to this chapter.

Section 17-1-50. Effect of filing articles of termination.

On the filing of the articles of termination the existence of the limited liability company ceases, except for the purpose of suits, other proceedings and appropriate action as provided in this chapter. The managers in office at the time of termination or, if none, the members are thereafter trustees for the members and creditors of the terminated limited liability company and as such may distribute any of the limited liability company's property discovered after termination, may convey real estate and may take other action as necessary on behalf of and in the name of the terminated limited liability company.

Section 17-1-51. Involuntary judicial dissolution.

A. On application by or for a member, the Pueblo Court may decree dissolution of a limited liability company created under this chapter on judicial determination of any of the following:

- (1) It is not reasonably practicable to carry on the limited liability company business in conformity with an operating agreement.
- (2) Unless otherwise provided in an operating agreement, the members or managers are deadlocked in the management of the limited liability company and irreparable injury to the limited liability company is threatened or being suffered or the business of the limited liability company cannot be conducted to the advantage of the members generally because of the deadlock.
- (3) Unless otherwise provided in an operating agreement, the members or managers of the limited liability company have acted or are acting in a manner that is illegal or fraudulent with respect to the business of the limited liability company.
- (4) Unless otherwise provided in an operating agreement, substantial assets of the limited liability company are being wasted, misapplied or diverted for purposes not related to the business of the limited liability company.

B. The trial court has full power to wind up and liquidate the assets and business of a limited liability company:

- (1) On application by a limited liability company after dissolution to have its liquidation continued under the supervision of the court.
- (2) In an action filed by any member after the issuance of a judgment of dissolution as provided in subsection A. of this section.

Section 17-1-52. Law governing foreign limited liability companies.

A. Subject to the revised Constitution of the Pueblo of Laguna:

- (1) The laws of the state or other jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members, except as provided in subsection B. of this section.

- (2) A foreign limited liability company shall not be denied registration by reason of any difference between the laws of the jurisdiction under which a foreign limited liability company is organized and the laws of the Pueblo.

B. A foreign limited liability company that has obtained a certificate of registration pursuant to this chapter and its members and managers have no greater rights and privileges than a domestic limited liability company and its members and managers with respect to transactions and relationships with persons who are not members. The certificate of registration does not authorize the foreign limited liability company to exercise any powers or engage in any business that a domestic limited liability company is forbidden to exercise or engage in by the laws of the Pueblo.

Section 17-1-53. Certificate of registration; application.

Before transacting business in the Pueblo, a foreign limited liability company shall obtain a certificate of registration. An applicant for a certificate of registration shall pay the required filing fee and shall submit to the Secretary an application for registration as a foreign limited liability company that is signed and acknowledged on its behalf by any manager, member or other authorized agent and that states:

- A. The name of the foreign limited liability company and, if different, the name under which it proposes to register and transact business in the Pueblo.
- B. The Tribe, state or nation and date of its formation.
- C. The purpose of the foreign limited liability company or the general character of the business it proposes to transact in the Pueblo.
- D. The name and address of the proposed agent for service of process on the foreign limited liability company.
- E. The address of the office required to be maintained by the laws of the Tribe, state or nation of its organization, or, if not so required, of the principal office of the foreign limited liability company.

Section 17-1-54. Registration of foreign limited liability company; certificate of registration.

A. If the Secretary finds that an application for registration conforms to law and that all requisite fees have been paid, he/she shall:

- (1) Endorse, stamp or attach on the signed original of the application the word "filed" and the month, day and year of the filing.
- (2) Retain the signed original of the application.
- (3) Issue a certificate of registration to transact business in the Pueblo.

B. The certificate of registration and a duplicate original of the application shall be returned to the person who filed the application or his representative.

Section 17-1-55. Name of foreign limited liability company.

A foreign limited liability company may register with the Secretary under any name, whether or not it is the name under which it is registered in its Tribe, state or nation of organization, that includes the words "limited liability company" or the abbreviations "L.L.C.", or "LLC", in uppercase or lowercase letters provided that the name is distinguished from the name of the limited liability company as set forth in its articles of organization shall be distinguishable from the name of any corporation, partnership, limited partnership, limited liability partnership, limited liability company or other business entity authorized to transact business in the Pueblo, the State of New Mexico, any foreign jurisdiction or any fictitious name adopted by such business entity.

Section 17-1-56. Changes and amendments to foreign registration.

If a statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed making the application inaccurate in any respect, a foreign limited liability company shall promptly file with the Secretary in duplicate, a certificate correcting the statement that is signed and acknowledged on its behalf by a member.

Section 17-1-57. Requirement for statutory agent of foreign limited liability company.

A foreign limited liability company authorized to transact business in the Pueblo shall:

- A. Appoint and continuously maintain a statutory agent in the same manner as provided in section 17-1-3.
- B. File a report on any change in the name or business address of its statutory agent in the same manner as provided in section 17-1-4.

Section 17-1-58. Revocation of certificate of registration of foreign limited liability company.

A. The certificate of registration of a foreign limited liability company to transact business in the Pueblo may be revoked by the Secretary in the manner provided by subsection B. of this section if any of the following events occurs:

- (1) The foreign limited liability company fails to:
 - (a) Pay any fees or penalties prescribed by this chapter.
 - (b) Appoint and maintain a statutory agent as required by this chapter.
 - (c) File a report on a change in the name or business address of the statutory agent.
 - (d) File with the Secretary any amendment to its application for a certificate of registration as specified in section 17-1-56.

- (2) A misrepresentation has been made of any material matter in any application, report, affidavit or other document submitted by the foreign limited liability company pursuant to this chapter.

B. The Secretary shall not revoke a certificate of registration of a foreign limited liability company pursuant to subsection A. of this section unless the Secretary gives the foreign limited liability company at least sixty (60) days' notice of the revocation by mail addressed to its statutory agent, or if the foreign limited liability company fails to appoint and maintain a statutory agent, addressed to the office required to be maintained pursuant to subsection 17-1-53E. The notice shall identify the cause for the revocation of the certificate of registration. The authority of the foreign limited liability company to transact business in the Pueblo ceases on the expiration of the sixty-day period unless the foreign limited liability company cures the failure stated in the notice.

Section 17-1-59. Cancellation of registration of foreign limited liability company.

A foreign limited liability company may cancel its registration by filing with the Secretary a certificate of cancellation signed and acknowledged on its behalf by any manager, member or authorized agent. A cancellation does not terminate the authority of the Secretary to accept service of process on the foreign limited liability company with respect to causes of action arising out of the transaction of business in the Pueblo.

Section 17-1-60. Transaction of business without registration.

A. A foreign limited liability company transacting business in the Pueblo shall not maintain an action, suit or proceeding in the Pueblo Court until it has obtained a certificate of registration to transact business.

B. The failure of a foreign limited liability company to obtain a certificate of registration to transact business does not impair the validity of any contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending any action, suit or proceeding in the Pueblo Court.

C. A member of a foreign limited liability company is not liable for any debt, obligation or liability of the limited liability company by reason of having transacted business in the Pueblo without a certificate of registration.

D. Without excluding other activities that may not constitute transacting business in the Pueblo, a foreign limited liability company is not considered to be transacting business in the Pueblo for the purposes of this chapter solely because it is carrying on one (1) or more of the following activities in the Pueblo:

- (1) Maintaining, defending or effecting a settlement of an action or suit or an administrative or arbitral proceeding or effecting the settlement of a claim or dispute.
- (2) Holding meetings of its members or carrying on any other activities concerning its internal affairs.
- (3) Maintaining a bank account.

- (4) Maintaining an office or agency for the transfer, exchange and registration of its securities or appointing and maintaining trustees or depositories with relation to its securities.
- (5) Effecting sales through an independent contractor.
- (6) Soliciting or receiving orders outside the Pueblo in pursuance of letters, circulars, catalogs or other forms of advertising or solicitation and accepting the orders outside the Pueblo and filling them with goods shipped into the Pueblo.
- (7) Creating as borrower or lender or acquiring indebtedness, mortgages or other security interests in real or personal property.
- (8) Securing or collecting debts or enforcing any right in property securing the debts.
- (9) Conducting an isolated transaction completed within a period of thirty (30) days and not in the course of a number of repeated transactions of a similar nature.

E. This section does not apply in determining the context or activities that may subject a foreign limited liability company to service of process, suit, taxation or regulation under any other law of the Pueblo.

Section 17-1-61. Action by Pueblo.

The Pueblo may bring an action to restrain a foreign limited liability company from transacting business in the Pueblo in violation of this chapter.

Section 17-1-62. Service of process on a foreign limited liability company.

Service on a foreign limited liability company shall be as provided by applicable law regarding service of process.

Section 17-1-63. Effect of executing application or certificate.

Execution of an application or a certificate by a foreign limited liability company constitutes an affirmation by the person who signed it under the penalties of perjury that the facts stated in the application or certificate is true.

Section 17-1-64. Right of member to bring derivative action.

A member may bring an action in the right of the limited liability company to recover a judgment in its favor if all of the following conditions are met:

A. Either of the following:

- (1) Management of the limited liability company is vested in a manager or managers who have the sole authority to cause the limited liability company to sue in its own right.
- (2) Management of the limited liability company is reserved to the members and the plaintiff does not have the authority to cause the limited liability company to sue in its own right under the provisions of an operating agreement.

- B. The member has made demand on the manager or those members with such authority requesting that the manager or the members cause the limited liability company to sue in its own right.
- C. The members or managers with such authority have wrongfully refused to bring the action or, after adequate time to consider the demand, have failed to respond to the demand.
- D. The member is a member of the limited liability company at the time the action is brought and was a member of the limited liability company at the time of the transaction of which he complains or his status as a member of the limited liability company thereafter devolved on him pursuant to the terms of an operating agreement from a person who was a member at such time.
- E. The member fairly and adequately represents the interests of the members, except those members that would be defendants in the action, in enforcing the right of the limited liability company.

Section 17-1-65. Pleading.

In a derivative action, the complaint shall state with particularity the effort of the plaintiff to secure initiation of the action by the managers or the members who would otherwise have the authority to cause the limited liability company to sue in its own right.

Section 17-1-66. Expenses.

A. If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney fees, and shall direct the plaintiff to remit to the limited liability company the remainder of those proceeds received by him.

B. In an action instituted in the right of any domestic or foreign limited liability company by a member or members, the court having jurisdiction on final judgment and a finding that the action was brought without reasonable cause may require the plaintiff or plaintiffs to pay to the parties named as defendants the reasonable expenses, including attorney fees, incurred by them in the defense of such action.

Section 17-1-67. Fees.

The Secretary shall charge and collect in advance the following fees:

- A. For filing the initial articles of organization, sixty dollars (\$60.00).
- B. For filing an application for registration of a foreign limited liability company, one hundred fifty dollars (\$150.00).
- C. For amending the articles of organization, fifty dollars (\$50.00).

- D. For filing articles of termination and issuing a certificate of termination, thirty-five dollars (\$35.00).
- E. For issuing a certificate for any purpose not otherwise provided for, twenty-five dollars (\$25.00).
- F. For filing a notice of winding up, twenty-five dollars (\$25.00).
- G. For filing articles of merger, fifty dollars (\$50.00).
- H. For furnishing written information on any limited liability company, ten dollars (\$10.00).
- I. For furnishing a copy of any document or instrument, five dollars (\$5.00), plus fifty cents (\$.50) per page.
- J. For filing a statement of change of address of registered office or statutory agent, or both, five dollars (\$5.00).

Section 17-1-68. Rules of construction.

A. The rule that statutes in derogation of the common law are to be strictly construed does not apply to this chapter.

B. The law of estoppel and the law of agency apply to this chapter.

C. This chapter shall not be construed to impair the obligations of any contract existing on the effective date of this chapter, nor to affect any action or proceeding begun or right accrued before that date.

Section 17-1-69. Taxation.

A limited liability company established under this chapter or a foreign limited liability company transacting business in the Pueblo pursuant to this chapter, shall pay the taxes that are imposed by the laws of the Pueblo on domestic and foreign partnerships on an identical basis.

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